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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,241	12/17/2001	Philip M. Ginsberg	01-1016	3705
63710 7590 04/09/2009 DEAN P. ALDERUCCI CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER DASS, HARISH T				
ART UNIT 3692		PAPER NUMBER		
MAIL DATE 04/09/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/023,241

**Applicant(s)**

GINSBERG, PHILIP M.

**Examiner**

HARISH T. DASS

**Art Unit**

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 23, 26, 27, 32, 33, 37, 43, 50-53 and 55-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 23, 26, 27, 32, 33, 37, 43, 50-53 and 55-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/21/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This office action is in response to applicant's communication of 1/16/2009.
2. ***Status of Claims:***  
  
Claims 1-12, 14-22, 24, 26, 28-31, 34-36, 38-42, 44-49, 54 are canceled.  
  
Claims 13, 23, 26, 27, 32-33, 37, 43, 50-53, 55-77 are pending.
3. Examiner's acknowledgement: The rejections of 35 U.S.C. 101 (claim 13) and 35 U.S.C. 112 (2<sup>nd</sup> paragraph) for claims 13, 55-63 are removed, based of the amendment of 1/16/09.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
  

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 13, 23, 25, 32-33, 55-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros et al (hereinafter Gianakouros-US 2002/0055901) in view of Anthonyson (US 5,414,624).

Re. Claim 13, Gianakouros discloses method and system, a plurality of communications links designed to communicate trade information to and from a plurality of workstations, the trade information comprising information describing orders in an electronic market for items offered for sale or bid to buy, at least some of the trade information to be presented to the workstations and a commission processing module designed to receive information relating to execution of trades in the items, and to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [see at least - Figure 2; paragraphs 20 "broker will be ... commissionable trade in shortest amount of time", 57 "the commission is the charge per share ... depends on a number of factors ...broker.", 80];

Gianakouros does not explicitly disclose commission of a trade based at least in part on one or more characteristics from the group consisting of the time of the trade, day of the trade, location of a trade, and the customer trading location.

However, commissions and fees are known where customers are charged for services by service provider. Similarly, it is known that there are two ways broker make money (income), for his/her service, from charging a commission or spreads between buying price and selling price, where commission charges may be based on different criteria.

Anthonyson (analogous art - collecting fee for service) discloses automatic vehicle parking system using computer and control processor and commission (charge a fee or parking fee) of a trade (parking transaction) based at least in part on one or more characteristics from the group consisting of the time of the trade (the hour, by the

day, ... daytime), day of the trade (the hour, by the day, ... daytime only, weekend ...), or location of a trade (parking facility) [Figures 1, 4; col. 6 lines 18-34; col. 8 line 56 through col. 9 line 13]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Gianakouros and include commission of a trade (parking fee) based at least in part on one or more characteristics (a number of factors) from the group consisting of the time of the trade, day of the trade, and location of a trade ("the hour, by the day, ... daytime only, weekend ..."; "parking facility"), as disclosed by Anthonyson, to allow individuals to benefit from different type of service provided by the service provider to optimize its cost with respect to service customer gets.

Re. Claims 23 and claim 25 are rejected with same rationale as claim 13.

Re. Claims 32-33, Gianakouros wherein the commission is further based on whether at least one of said two customers was active or passive during said trade [see at least claim 21], and wherein the commission is further based on a class which includes said item [paragraph (para.) 23-33 and commission, equity, stocks].

Re. Claims 55-69, Gianakouros discloses sell and buy side of a security (items similar to said item being traded by said customer were traded by other customers at the time, day, or location said item was traded by said customer) and customer for participating in at least part of said trade [abstract; para. 33; 40]. Anthonyson discloses trading charges

based in part on time, location, level of liquidity, etc as disclosed above. Spread is known, the more the spread more is the commission (see above). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and include commission & fee bases (see above), as discloses by Anthonyson, to be paid by the trader as trader and broker have agreed between them to compensate the broker for his/her services.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros and Anthonyson, as applied to claim 25 above and further in view Koppelman et al. (hereinafter Koppelman – US 6,662,164).

Re. Claim 27, Koppelman discloses assigning at least one of said two customers (buyer/seller) said commission based on the one or more attributes of the trade; and presenting said commission to said at least one of said two customers [Figure 2; Abstract; col. col. 2 line 48 through col. 3 line 10]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and Anthonyson and include the distribution commission (display commission) as disclosed by Koppelman to inform the client what he is paying for trading and allow him/her to choose to execute a trade or not.

7. Claims 37, 43, 50-53, and 70-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros, Anthonyson and Koppelman.

Re. Claim 37, Gianakouros discloses providing control logic designed to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer, based at least in part on one or more attributes of a trade of an item arranged by a computer system between at least two customers. Anthonyson disclose one or more attributes being drawn from the group consisting of the time of the trade, day of the trade, location of the trade, and customer trading location [see above].

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and include commission of a trade (parking fee) based at least in part on one or more characteristics (a number of factors) from the group consisting of the time of the trade, day of the trade, and location of a trade ("the hour, by the day, ... daytime only, weekend ..."; "parking facility"), as disclosed by Anthonyson, to allow individuals to benefit from different type of service provided by the service provider to optimize it cost with respect to service customer gets and agrees to compensate the provide for services.

Koppelman discloses storing in the memory\_ of the computer system for offset against future commissions an amount of a reward based at least in part on the characterized attribute of the trade. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of

Gianakouros and Anthonyson and include the above features disclosed by Koppelman to evaluate desired level of performance earn by the recipients and provide credit incentive toward future trading in form of reward.

Re. Claim 43, Gianakouros discloses wherein the commission is further based on whether said customer was active or passive during said trade.

Re. Claims 50-53 and 70-77, Gianakouros discloses sell and buy side of a security (items similar to said item being traded by said customer were traded by other customers at the time, day, or location said item was traded by said customer) and customer for participating in at least part of said trade [abstract; para. 33; 40] and level of liquidity [para. 6, 57]. Anthonyson discloses trading charges based in part on time, location, etc as disclosed above. Spread is known, the more the spread more is the commission (income). Gianakouros or Anthonyson does not explicitly disclose determining said reward, reward comprises determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer. However, assign new customer for rebates and credit (determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer) are known. For example, most of stores provide incentive to new customer to apply for store credit card and they will receive 10% credit and rebates for using their cards. It is obvious that to attract new



customer and compete with others, store provide these incentives. Koppelman discloses determining said reward, reward [see supra]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and Anthonyson and include the above feature disclosed by Koppelman in order to calculate the rewards and bonus for eligible clients based on clients activity.

### ***Response to Arguments***

8. Applicant's arguments filed 1/16/2009 have been fully considered but they are not persuasive.

In response to the Applicant's remarks (citation page 9/14) "Applicant requests identification of a document that "it is known ...". Attached is a document which supports the Examiner's assertion, see "Forex Software Solutions".

Applicant's traversal of Examiner's official notice is inadequate. Applicant failed to provide any evidence. See MPEP section 2144.03;

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common knowledge, the Examiner Must Support the Finding With Adequate Evidence. To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR

1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 (“[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention.”). A general allegation that the claims define a patentable invention without any reference to the examiner’s assertion of official notice would be inadequate. If applicant adequately traverses the examiner’s assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (“[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings” to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

**If applicant does not traverse the examiner’s assertion of official notice or applicant’s traverse is not adequate**, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner’s assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

Based on the attached document "Forex Software Solutions" the examiner's assertion of official notice is a common knowledge or well-known in the art.

In response to applicant's remarks (citation page 10/14) that

9. In response to applicant's argument that (citation page 10/14) secondary reference Anthonyson (US 5,414,624) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both the invention and the prior art charging different fee for different time is based on the time of usage which is obvious is based on the demand.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Claims 13, 23, 25, 27, 32-33, 37, 43, 50-53, 55-77 remain rejected under 35 USC 103(a).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR ' 1.111 (c) to consider the references fully when responding to this action.

Attachment "Forex Software Solutions" discloses, there are two major mechanisms for the broker to be compensated - either through commission (you are charged a small percentage of your trade as commission) or through the so called "spread". See response to argument, above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARISH T. DASS whose telephone number is (571)272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Abdi Kambiz can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harish T Dass/  
Primary Examiner, Art Unit 3692

Wednesday, April 08, 2009